

NOTICE OF PROPOSED REGULATORY ACTION

TITLE 2. ADMINISTRATION, DIVISION 3. STATE PROPERTY OPERATIONS CHAPTER 1. STATE LANDS COMMISSION ARTICLE 4.5. MARINE INVASIVE SPECIES CONTROL FUND FEE

The California State Lands Commission (the Commission) proposes to amend the regulation described below after considering all comments, objections or recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The Commission proposes to amend Sections 2270 and 2271 under Article 4.5 in Title 2, Division 3, Chapter 1 of the California Code of Regulations (CCR). This section would amend the fee to be paid by vessels calling at California ports (the Fee). The Fee is to be used for the Marine Invasive Species Control Fund (the Fund) under Division 36 of the Public Resources Code (P.R.C.) entitled, "Marine Invasive Species Act," established under Chapter 491, Statutes of 2003 (the Act). The proposed regulation would increase the Fee from two hundred dollars (\$200) per vessel per voyage to five hundred dollars (\$500) per vessel per voyage if the vessel has traveled outside of California. Provisions are also included whereunder the Commission's Executive Officer would appoint a technical advisory group (TAG) to provide recommendations with regard to the Fee.

WRITTEN COMMENT PERIOD

Any interested person or his or her authorized representative may submit written comments relevant to the proposed regulatory action to the Commission. The written comment period closes at 5.00 PM on March 8, 2004. All written comments must be received at the Commission, by that time. Written comments should be submitted to:

Livin Prabhu
Supervisor, Planning Branch
California State Lands Commission, Marine Facilities Division
200 Oceangate, Suite 900
Long Beach, CA 90802

Written comments may also be submitted by facsimile to (562) 499-6317, attention Livin Prabhu or by e-mail to "prabhul@slc.ca.gov"

PUBLIC HEARING

The Commission has not scheduled a public hearing on this proposed regulatory action. However, the Commission will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days before the close of the written comment period.

AUTHORITY AND REFERENCE

P.R.C. Section 71207 describes the State program to regulate discharges of ballast water in order to limit the introduction of nonindigenous species. In enforcing the provisions of the Act, the Commission is authorized to adopt the proposed regulations, which would implement, interpret or make specific P.R.C. Section 71215.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

P.R.C. Section 71215 created the Fund and requires the Commission to establish a reasonable and appropriate Fee to carry out the activities required by the Marine Invasive Species Act. It also mandates that the Fee may not exceed one thousand dollars (\$1,000) per vessel voyage. Under P.R.C. Section 71215(c), the State Board of Equalization shall collect the fee from the owner or operator of each vessel that arrives at a California port of place from a port or place outside California. That fee may not be assessed on any vessel arriving at a California port or place if that vessel comes directly from another California port or place and during that transit has not first arrived at a port or place outside California or moved outside the EEZ prior to arrival at the subsequent California port of place.

Accordingly, the proposed regulation would amend the Fee requirement under P.R.C. Section 71215(b)(1). The Fee is required to fulfill the specific multi-agency tasks mandated by the Act. However, the current Fee amount (\$200 per vessel per voyage) is not expected to produce funds sufficient to meet the budget needs of the programs. Section 2271(a) of the CCR would set the exact amount of the fee to be used to support the programs required under the Act at five hundred dollars (\$500) per vessel voyage.

DIFFERENCES FROM FEDERAL REGULATIONS

Recognizing the severity of the problem, the federal government implemented a National ballast water exchange and reporting program in July 1999, but it is voluntary for vessels entering the United States and consists of little more than information gathering at the present time. The Federal program was promulgated in the Federal Register, Vol. 68 No. 146 of July 30, 2003. The Federal Government is considering making the ballast water management program mandatory. The proposed regulations will be published in 33 CFR Part 151. The Federal requirements however, do not require or specify a fee. The Federal monitoring program provides for review of shipboard ballast exchange records and selective ballast water sampling. The Federal program does not contain a mechanism to research alternative methods of ballast water management. The state program established a mandatory, statewide, multi-agency ballast water management and control program. Responsible agencies include the Commission, Department of Fish and Game, State Water Resources Control Board and the Board of Equalization. Each agency is required to work in cooperation with the others in developing reports and conducting research into the extent of current invasions, and potential long-term solutions to the problem of nonindigenous species introductions. All the activities required by the Act are paid for through the Fund.

Small Business Determination

The Commission has determined that these regulations do not affect small businesses as defined in Government Code (Gov. C.) Section 11342.610, because all affected businesses are commercial maritime transport owners and operators, as specified under Gov. C. Section 11342.610, and having annual gross receipts of more than \$1,500,000, as specified under Gov. C. Section 11342.610(b)(7).

Regulations in Plain English

The proposed regulations have been drafted in a plain and straightforward manner pursuant to Government Code section 11346.2(a)(1).

ESTIMATED COSTS TO THE STATE

No costs to the State would be incurred in implementing and enforcing these proposed regulations beyond those collected in the Fund. Since the regulation here proposed is limited to amending a fee to pay for programs already mandated by the Act; the regulations will not increase costs to the State. While the various programs mandated under the Act are estimated to cost approximately \$3,479,000 each year until the Act expires under its current terms, all of those programs are mandated by the Act; none can be attributed to the regulatory action here proposed. Under this proposal, the Fee would be set at a level that is expected to provide revenues equal to costs required to implement the Act. No costs will be incurred by the State in implementing any or all programs mandated by the Act beyond the amounts generated through collection of the Fee.

DISCLOSURES REGARDING THE PROPOSED ACTION

Mandate on local agencies and school districts: None.

Costs or savings to any state agency: None.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None.

Other non-discretionary cost or savings imposed upon local agencies: None.

Costs or savings in federal funding to the state: None.

Cost impact on private persons or directly affected businesses: All vessel owners or operators affected by the proposed amended regulation will be required to pay a fee of five hundred dollars (\$500) per vessel voyage.

Creation or elimination of jobs within the State of California: The Commission has determined that adoption of the proposed regulations will not:

- (1) create or eliminate jobs within California;
- (2) create new businesses or eliminate existing businesses within California; or
- (3) affect the expansion of businesses currently doing business within California.

The Commission has determined that the action will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

Significant effect on housing costs: None.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Commission must determine that no reasonable alternative considered by it or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The Commission invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the above-mentioned hearings or during the written comment period.

CONTACT PERSON

Inquiries concerning the substance of the proposed action may be directed to:

Maurya Falkner
Staff Environmental Scientist
California State Lands Commission, Marine Facilities Division
100 Howe Avenue, Suite 100 South
Sacramento, CA 95825-8202
Telephone: (916) 574-2568

Or to: Mark A. Meier
Senior Staff Counsel
California State Lands Commission
100 Howe Avenue, Suite 100 South
Sacramento, CA 95825-8202
Telephone: (916) 574-1853

Requests for copies of the proposed text of the regulations, the initial statement of reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based should be directed to:

Livin Prabhu
Supervisor, Planning Branch California State Lands Commission, Marine
Facilities Division
200 Oceangate, Suite 900
Long Beach, CA 90802
Telephone: (562) 499-6312

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Commission will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its offices at either of the above addresses. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations and the initial statement of reasons. Copies may be obtained by contacting Livin Prabhu at the address or telephone number listed above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

Following the hearing, the Commission may adopt the proposed regulations substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed text, the modified text, with changes clearly indicated, shall be made available to the public for at least 15 days prior to the date on which the Commission adopts the regulations. Requests for copies of any modified regulations should be sent to the attention of Livin Prabhu at the address indicated above. The Commission will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Mr. Prabhu at the above address.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations in underline and strikeout can be accessed through our website at http://www.slc.ca.gov/Program_Pages/Program_Pages.htm